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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations)

(Fort Bridger, Wyoming and Hyrum, Utah))

MM Docket No. 99-232

RM-9321

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION TO MOTION TO STRIKE

M. Kent Frandsen ("Frandsen"), permittee of FM radio broadcast station KNYN, Fort Bridger, Wyoming ("KNYN"), by his attorneys, hereby submits his Opposition to Motion to Strike ("Motion") filed by KGNT, Inc. ("KGNT") on October 26, 1999, pursuant to the Commission's *Notice of Proposed Rulemaking* ("NPRM") to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 256C3 from Fort Bridger, Wyoming to Hyrum, Utah.

As demonstrated in Frandsen's Reply Comments, his proposal to reallocate Channel 256C3 to Hyrum satisfies the factors under the Commission's *Tuck* analysis and will not result in a loss of transmission or reception service to Fort Bridger because KNYN is not on the air. KGNT argues in its Reply Comments and Motion that the reallocation cannot be granted because Frandsen did not timely express his interest in the channel. As set forth below and in Frandsen's Response to Reply Comments, that argument is not supported by precedent.

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Discussion

I. Frandsen's Gain/Loss Study, Tuck Showing, And Expression of Interest Are Valid And Were Timely Filed.

In its Motion, KGNT claims that Frandsen's gain/loss study and Tuck showing were "late-filed" and "should be stricken."¹ KGNT is wrong. Frandsen made the showings requested by the Commission in the *NPRM* and expressed his interest in applying for and constructing facilities on the proposed channel in a timely fashion within the designated filing periods. They were not late-filed. In fact, Frandsen filed both his Comments and his Reply Comments on or before the required deadlines. As Frandsen stated in his Response to KGNT's Reply Comments,² the Commission has accepted showings and expressions of interest that were filed months after the comment filing deadline, as long as no conflicting proposal existed and there was no adverse impact on any other pending proposal.³ Even in the case that KGNT relies on to support its argument and quotes at length from in its Motion,⁴ the expression of interest was considered "untimely" and unacceptable because it was filed a month after the comment deadline and two weeks after the reply comment

¹ See Motion at 3-5.

² KGNT was not prejudiced by the filing of Frandsen's Response to Reply Comments. KGNT had an opportunity to reply to the Response without violating any deadline or time limit for response. Consequently, Frandsen respectfully requests that his Response be considered in this proceeding.

³ See *Santa Isabel, Puerto Rico and Christiansted, VI*, 3 FCC Rcd 2336 (1988), *aff'd*, 4 FCC Rcd 3412 (1989); *aff'd sub nom. Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990) (expressions of interest not filed until a month or more after the comment period had ended); *Memorandum Opinion and Order (Moscow, Ohio; Paris, et. al., Kentucky)*, 5 FCC Rcd 927 (1990) (expression of interest not filed until Petition for Reconsideration of the Report and Order in the proceeding); *Report and Order*, 1997 FCC LEXIS 1323 (March 14, 1997).

⁴ See Motion at 3-4.

deadline and the proceeding involved a conflicting proposal.⁵ In this proceeding, no conflicting or “counter” proposals were filed against the proposed allocation, and the Commission’s acceptance of Frandsen’s showings will have no adverse impact on any other pending proposal.⁶ Consequently, even if Frandsen’s showings could be considered “untimely filed” because they were filed on the deadline for reply comments instead of the deadline for comments, the Commission’s acceptance of Frandsen’s showings is supported by precedent.⁷

In addition, KGNT claims in its Motion that Frandsen had not yet filed a “valid” expression of interest because his interest is “contingent” upon the outcome of the broadcast auction.⁸ In both his Reply Comments and his Response to Reply Comments, Frandsen firmly stated his intent to file an application for the channel and promptly construct the facilities. He also stated that he “may withdraw” this interest based on the outcome of the auction, but that does not change the fact that he sufficiently and timely expressed his interest. In *Caldwell, College Station and Gause, TX*, 13 FCC Rcd 13772 (1998), the case KGNT relies on to support its argument, the proceeding involved a counterproposal, the expression of interest in the proposed channel was not made until a year after

⁵ See *Santa Isabel, Puerto Rico and Christiansted, VI*, 3 FCC Rcd 2336 (1988), *aff’d*, 4 FCC Rcd 3412 (1989); *aff’d sub nom. Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990).

⁶ KGNT’s comments in opposition to Frandsen’s proposed allocation may make this proceeding “contested,” but they cannot be construed as a counter-proposal or conflicting proposal. KGNT is objecting to the allocation but is not proposing a different, or conflicting allocation.

⁷ See *Memorandum Opinion and Order (Moscow, Ohio; Paris, et. al., Kentucky)*, 5 FCC Rcd 927 (1990); *Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990); *Report and Order*, 1997 FCC LEXIS 1323 (March 14, 1997).

⁸ See Motion at 6.

the counterproposal was filed, and the interest was contingent upon the Commission relaxing its multiple ownership rules to allow the applicant to own the proposed facility. This is a very different situation than the subject proceeding where there is no counterproposal, a timely expression of interest was submitted, and the possibility of withdrawal of interest is based on the applicant's decision, not Commission action.

As demonstrated above and in his Reply Comments and Response to Reply Comments, Frandsen's gain/loss study, *Tuck* showing and expression of interest are valid, were timely filed, and should be accepted by the Commission.

II. The Proposal Satisfies The *Tuck* Analysis And Establishes Hyrum's Independence.

In its Motion, KGNT claims that the proposed reallocation of Channel 256C3 from Fort Bridger to Hyrum would "not result in a preferential arrangement of allotments" and Frandsen's *Tuck* showing is insufficient to establish Hyrum's independence.⁹ KGNT again is incorrect. As stated in Frandsen's Reply Comments, the reallocation would result in no "loss" to the community of Fort Bridger because Station KNYN is not on the air and there would be significant "gain" to the community of Hyrum, which has a population of 4,829, almost 40 times that of Fort Bridger, which has a population of only 150.¹⁰ Consequently, the reallocation would result in a "preferential arrangement of allotments" that would serve a greater number of persons. In addition, the Commission has consistently held that the degree of interdependence between the proposed community and the centralized city in the Urbanized Area is the most important factor in a *Tuck*

⁹ See Motion at 9.

¹⁰ See Frandsen's Reply Comments at 3.

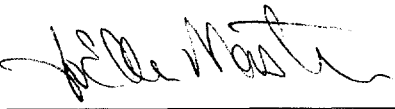
analysis. *See Farmington, California*, 11 FCC Rcd 8117 (1996). As demonstrated in Frandsen's Reply Comments, the City of Hyrum exists as a community that is completely independent from the City of Logan, and is therefore deserving of a first local service preference.¹¹

Conclusion

For the foregoing reasons, Frandsen respectfully requests that the Commission dismiss KGNT's Motion to Strike, reallocate Channel 256C3 from Fort Bridger, Wyoming to Hyrum, Utah, and modify the license of radio station KNYN(FM) accordingly.

Respectfully submitted,

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¹¹ See Frandsen's Reply Comments at 4-7.

CERTIFICATE OF SERVICE

I, Marcella Schiappacasse, a secretary in the law firm of Fisher, Wayland, Cooper, Leader & Zaragoza L.L.P., hereby certify that I have, on this 10th day of November 1999, caused a copy of the foregoing **"Opposition to Motion to Strike"** to be served by first class U.S. mail, postage prepaid, to the following:

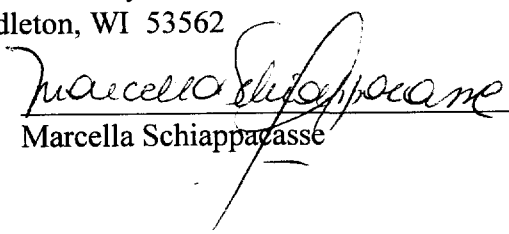
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